

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "the electronic and/or communications channel" in the second limitation and "the minimum" in the third limitation.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 32 & 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 32, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In order for a method to be statutory it must have a practical application of another wise abstract idea. A practical application may be achieved through either: a) physical transformation or b) an otherwise useful, concrete

and tangible result. To show a physical transformation, the method must physically transform an article or physical object to a different state or thing. This is not achieved in this method because this method in the end only permits modification. Further, the method fails to show a tangible result. In order a method to be tangible it must show a real-world or perceivable result. In the instant case, the method results in only permitting modifications, which is not, a real-world result because nothing is stated as to what happens after permitting modifications. The claims do not state that the modification takes place and/or what the modification is.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-47 are rejected under 35 U.S.C. 102(b) as being anticipated by (U.S. Patent Number 6,146,148).

Referring to claim 1, Stuppy discloses providing access through a user's interface device to an assessment delivery and management system (teacher (20) and student (22) workstations); managing the delivery to said user's interface device-of multiple components (instructional materials), including a component containing information content (for example, textbook pages or worksheets) and a component containing assessment items (for example, tests), having said delivery to said user's interface device of multiple components, including a component containing information content

and a component containing assessment items (delivery of work pages and other instructional materials) occur via electronic and/or communications channel or channels (column 4 lines 25-30); providing a format in which said multiple components within said user's interface device is presented in a manner that produces a continuous unified perceptual experience (student workbook) and allows for user activity to occur in any single component of the said multiple components (inputs of each student using the pen tablet interface); allowing the user to perform activity within said component containing said assessment items while said information content remains within the said component, containing said information content column 5 lines 50-56); designating assessment results upon said user's completion of said perform activity within said component containing said assessment items (column 5 lines 56-59 & column 6 lines 15 & 16: system corrects the tests); providing storage of said assessment results (column 11 lines 10-14); associating the said assessment results with the said user (column 11 lines 10-14); associating the said assessment results with said assessment items (column 13 lines 29-46); associating said assessment results with said information content (column 7 lines 19-24 & column 8 lines 21-46); and permitting modifications of said assessment results (amend or update student profile).

Referring to claims 2 & 28, Stuppy discloses wherein said electronics and/or communications channel or channels comprises information technology networks and sources including local area networks, Internet, Intranet, Extranets and local equipment; and communication networks and sources including digital and analog over-the-air transmissions, wireless transmissions, cable transmissions, and satellite transmissions

(column 4 lines 25-30).

Referring to claims 3 & 37, Stuppy discloses wherein said interface device comprises all connected, interrelated or otherwise associated equipment or devices that allow said user to experience and/or interact with other available, authorized and/or otherwise accessible resources within said electronic and/or communications channel or channels (Figs. 1, 2A, 2B & the associated text).

Referring to claim 4, Stuppy discloses wherein said assessment delivery and management system resides within components containing an information technology processor and associated components that is accessed via said electronic and/or communications channel or channels (Figs. 1, 2A, 2B & the associated text).

Referring to claim 5, Stuppy discloses wherein said assessment delivery and management system resides within components containing an information technology processor and associated components that is local to said user and not accessed via said electronic and/or communications channel or channels (Figs. 1, 2A, 2B & the associated text).

Referring to claims 6 & 34, Stuppy discloses wherein said information content comprises: information used in the process of educating, training, instructing, researching, informing and/or information gathering (column 4 lines 10-14); and information available in a plurality of formats including text, graphics, video, interactive communication, animation, audio; over-the-air transmission such as television and radio; tactile materials, olfactory materials, and other information formats (Fig. 8).

Referring to claims 7 & 35, Stuppy discloses wherein said information content

comprises information located and accessible through said electronics and/or communications channel or channels (column 4 lines 25-30).

Referring to claim 8, Stuppy discloses wherein said assessment items comprise: materials used by one party to evaluate, test, gather, measure and other methods used to gain insight into another party's understanding, knowledge, comprehension, attitudes, perceptions, progress, skill development, memory and other assessment criteria (Instructional materials); and materials supplied by another party including that developed by another party, that supplied but not developed by another party, and that referenced or linked by another party to other sources (column 28 lines 30-34: New curriculum materials).

Referring to claim 9, Stuppy discloses wherein said assessment items comprise a plurality of different assessment items types (instructional materials) and a plurality of items within each said assessment items types (for example, several text book pages or work sheets).

Referring to claims 10 & 33, Stuppy discloses wherein said assessment items types can include a plurality of formats and response options such as text, graphics, video, interactive communication, animation, audio, over-the-air transmission such as television and radio, tactile materials, olfactory materials, and other information formats (Figs. 3-10 & the associated text).

Referring to claim 11, Stuppy discloses wherein said assessment items allow for additional information including directions, information related to said information content and descriptions (Fig. 4: select instruction screen & column 13 lines 27-36 &

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lines 47-51).

Referring to claim 12, Stuppy discloses wherein said perform activity within said component containing said assessment items can include the transfer of materials within said electronics and/or communications channel or channels (column 4 lines 11-14).

Referring to claim 13, Stuppy discloses wherein said materials within said electronics and/or communications channel or channels may exist in locations not directly associated with said assessment delivery and management system (column 4 lines 25-30).

Referring to claims 14 & 44, Stuppy discloses wherein said perform activity within said component containing said assessment items may require said user to complete activities within other said multiple components before completing said activity within said component containing said assessment items (column 7 lines 25-46).

Referring to claim 15, Stuppy discloses wherein said multiple components (instructional materials) exist concurrently within said user's interface device (For example, teacher workstation).

Referring to claim 16, Stuppy discloses wherein said delivery to said user's interface device of multiple components can occur with each components being delivered via the same said electronics and/or communications channel or channels or with different components being delivered via different said electronics and/or communications channel or channels (column 4 lines 11-31).

Referring to claim 17, Stuppy discloses wherein each single component within said

multiple components contains information drawn from separate electronic and/or communications channel or channels location or locations (column 4 lines 11-31).

Referring to claims 18 & 40, Stuppy discloses wherein said continuous unified perceptual experience comprises all sensory stimuli or outputs that are present within said user's interface device (display instructional material on student workstation), either concurrently or in logical order, and producing a single or series of associated and undisturbed events (column 7 lines 25-46).

Referring to claim 19, Stuppy discloses wherein said user activity within a said single component of said multiple components occurs while information remains available in other components (Figs. 4-10 & the associated text).

Referring to claim 20, Stuppy discloses wherein said user activity to occur in any single component comprises allowing activities to be performed within one said component while all other said components remain materially undisturbed (the exercise currently displayed allows activities to be performed while the other exercises are not displayed so they are not disturbed).

Referring to claim 21, Stuppy discloses wherein said user activity to occur in any single component comprises allowing activities to be performed within one said component while intentionally intending to alter the information in other components (instructional material is updated or modified when needed).

Referring to claims 22 & 41, Stuppy discloses wherein one or more components of said multiple components reside as an individualized contained component or components within said format provided by said assessment delivery and management system

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(student profile).

Referring to claims 23 & 42, Stuppy discloses wherein said individualized contained component or components comprise items whose characteristics within said interface device including its dimensions, location, style, behavior and presentation aspects are controlled by said assessment delivery and management system (Figs. 3-10 & the associated text).

Referring to claim 24, Stuppy discloses wherein said alteration of said assessment results occurs within said continuous unified perceptual experience (update or alter student profile).

Referring to claims 25 & 45, Stuppy discloses wherein said user consists of a single individual or a group of individuals (Figs. 1, 2A, 2B & the associated text).

Referring to claims 26 & 46, Stuppy discloses wherein said group of individuals may access said assessment delivery and management system from more than one and different said interface devices connected to said electronics and/or communications channel or channels (column 4 lines 11-31).

Referring to claim 27, Stuppy discloses an assessment delivery and management system, comprising: assessment system for identifying, locating, providing access, associating, and otherwise maintaining information related to assessment items (teacher workstation); information content system for identifying locating, providing access, associating, and otherwise maintaining an information content event that includes information related to information content including the electronic and/or communications channel or channels location or locations of said information content

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(director workstation); means for managing the delivery to a user's interface device (delivery of work pages and other instructional materials) of multiple components (instructional materials) with the minimum consisting of a component containing (for example, tests) said assessment items and a component containing said information content (for example, textbook pages or worksheets); means for formatting said delivery to user's interface device of multiple components in a manner consistent with a continuous unified perceptual experience (student workbook) and allows for activities performed by a user to occur in any single component of the said multiple components (inputs of each student using pen tablet interface); means for designating assessment results upon said user saving activity related to said assessment items (column 5 lines 56-59 & column 6 lines 15-16); storage areas for retaining said information content event, said assessment items and said assessment results (column 11 lines 10-14); means for associating said assessment items with said information content via said information content event (instructional materials); means for associating said assessment results with said assessment items (column 13 lines 29-46); means for allowing modification to said assessment results (amend or update student profile); and means for associating with said user said activities performed by said user within said assessment delivery and management system (student input while working on instructional materials).

Referring to claim 29, Stuppy discloses wherein said assessment delivery and management system resides within components containing an information technology processor (central processor) and associated components (components of teacher,

director and student workstation).

Referring to claim 30, Stuppy discloses wherein said components containing an information technology processor and associated components are accessed via said electronic and/or communications channel or channels (column 4 lines 17-31).

Referring to claim 31, Stuppy discloses wherein said components containing an information technology processor and associated components are local to said user and not accessed via said electronic and/or communications channel or channels (components are on the student, teacher and director workstation).

Referring to claim 32, Stuppy discloses wherein said assessment items include: a plurality of assessment items types and a plurality of items within each said assessment items types (exercises within instructional materials); and the inclusion of additional information such as directions, information related to said information content and descriptions (Fig. 4: select instruction screen & column 13 lines 27-36 & lines 47-51).

Referring to claim 36, Stuppy discloses wherein said information related to information content including the electronic and/or communications channel or channels location or locations of said information content consists of either the direct or the indirect location or locations of said information content (column 4 lines 10-31).

Referring to claim 38, Stuppy discloses wherein said delivery to a user's interface device of multiple components occurs via said electronic and/or communications channel or channels (column 4 lines 10-31).

Referring to claim 39, Stuppy discloses wherein said delivery to a user's interface device of multiple components can occur with each component being delivered via the

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same channel or with different components being delivered via different channels (column 4 lines 10-31).

Referring to claim 43, Stuppy discloses wherein said assessment delivery and management system may allow for said user to make adjustments related to said individualized contained component or components (update the profile).

Referring to claim 47, Stuppy discloses wherein said assessment items can also be made available within said user's interface device without the presence of said information content component (delivered instructional materials).

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thornton*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-11, 15-18, 20, 21 & 24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7, 10-13, 16 &

19-24 of U.S. Patent No. 6,705,872 in view of Stuppy (U.S. Patent Number 6,146,148). For claim 1, U.S. Patent Number 6,705,872 discloses all the limitations of this application except having said delivery to said user's interface device of multiple components, including a component containing information content and a component containing assessment items occur via electronic and/or communications channel or channels; allowing the user to perform activity within said component containing said assessment items while said information content remains within the said component, containing said information content; designating assessment results upon said user's completion of said perform activity within said component containing said assessment items; providing storage of said assessment results; associating the said assessment results with the said user; associating the said assessment results with said assessment items; associating said assessment results with said information content; and permitting modifications of said assessment results. However, Stuppy teaches having said delivery to said user's interface device of multiple components, including a component containing information content and a component containing assessment items (delivery of work pages and other instructional materials) occur via electronic and/or communications channel or channels (column 4 lines 25-30); allowing the user to perform activity within said component containing said assessment items while said information content remains within the said component, containing said information content column 5 lines 50-56); designating assessment results upon said user's completion of said perform activity within said component containing said assessment items (column 5 lines 56-59 & column 6 lines 15 & 16: system corrects the tests);

providing storage of said assessment results (column 11 lines 10-14); associating the said assessment results with the said user (column 11 lines 10-14); associating the said assessment results with said assessment items (column 13 lines 29-46); associating said assessment results with said information content (column 7 lines 19-24 & column 8 lines 21-46); and permitting modifications of said assessment results (amend or update student profile). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the limitations above, as disclosed by Stuppy, incorporated into U.S. Patent Number 6,705,872 in order to deliver work pages and other instruction materials. Claims 2-11, 15-18, 20, 21 & 24 of the instant application corresponds to claims 2-7, 13, 10-12, 19, 20, 16 & 21-24, respectively.

Citation of Pertinent Prior Art

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Pearson et al. (U.S. Patent Number 6,705,872) teaches a method and system for creating and maintaining assessments.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KESHA FRISBY whose telephone number is (571)272-8774. The examiner can normally be reached on Monday-Friday 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. F./

Examiner, Art Unit 3714

/Ronald Laneau/
Supervisory Patent Examiner, Art Unit 3714
06/15/08